HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.23480 OF 2000

Between:

T. Sekhar

… Petitioner

AND

The Regional Transport Officer,
Nandyala, Kurnool District

… Respondent

:: O R D E R ::

Counsel for the petitioner : Shri John Rajendra Prasad

Counsel for the respondent : Government Pleader for Transport

July 4, 2007

This is a petition for quashing order dated 9-11-2000 passed by Regional Transport Officer, Nandyal, whereby he rejected the application made by the petitioner for renewal of driving licence bearing No.484/1995 and cancelled the same.

A perusal of the order under challenge shows that in the course of scrutiny of the application made by the petitioner for renewal of his driving licence, Regional Transport Officer, Nandyal (the respondent herein) discovered that he had obtained an endorsement authorizing

him to drive heavy transport vehicles without undergoing the prescribed test. Therefore, notice dated 31.12.1998 was issued to the petitioner proposing cancellation of his licence. The latter filed explanation dated 27.03.1999, wherein he admitted that he had not undergone any test. The respondent took cognizance of this and rejected the petitioner's application for renewal of licence and also cancelled the licence. This is evinced from the extracts of order dated 09-11-2000, which read as under:

> "In the reference 1st cited Sri T.Sekhar S/o. T.Venkata Ramaiah, Ramathirtham, B palli TQ, Kurnl (DT) applied for the addition of a new class of vehicle to his licence bearing No.484/95 to driver Heavy Transport Vehicles. He had filed an application to the Additional Licensing Authority, Nandyal in Form-8 by enclosing an effective L.L.R.No._____, dated_____ and Driving Licence held by the applicant and Driving Certificate in Form-5 with appropriate fee as specified in Rule 32.
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> On 19.7.97, the applicant obtained an endorsement to drive Heavy Transport Vehicles without undergoing the test of competence as required under Section 11 read with Section 9 of M.V. Act, 1988 by misrepresentation and not complying to the above provisions of law.
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> In the reference 2nd cited, a Show Cause Notice was issued to the above Licence-holder to Show Cause and explain as to why his licence should not be cancelled for obtaining H.T.V. Endorsement by mis-representation and without complying Section 11 of M.V. Act, 1988 as per Clause (e) of Sub-Section (i) of Section 19 of M.V. Act, 1988.
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> In response to the above Show Cause Notice the licence-holder has submitted his explanation in the reference 3rd cited stating that he had submitted his application in Form-8 to obtain H.T.V. endorsement without undergoing prescribed test of competence from the concerned M.V. Inspector as per oral advise of the Superintendent and concerned Clerk stating that they have received instructions that the Additional Licensing Authority is empowered to issue H.T.V. endorsement without appearing for the test of competence before the Authorities concerned as required under

Section 11 read with Section 9 of M.V. Act, 1988. Finally, he has represented that he is not responsible in obtaining H.T.V. endorsement without undergoing test of competence as per prescribed rules and hence requested to renew his Driving Licence.

The Connected record has been perused. On 19.7.97, the applicant filed an application in Form-8 together with effective LLR and Driving Certificate in Form No.5 with appropriate fee as specified in Rule 32. On the same day he obtained HTV Endorsement from the Additional Licensing Authority, Nandyal without undergoing test of competence as prescribed under rules in vogue. On the Licence holder has applied for renewal of his Driving Licence, since the applicant has obtained HTV Endorsement without undergoing test of ability to drive as prescribed in Form 8 and also by paying prescribed fee, a Show Cause Notice has been issued to the applicant to explain as to why the Driving Licence should not be cancelled. He has stated in his representation that he has filed his application in Form-8 without undergoing the test of ability to drive HTV as per the advise of the Clerk concerned and the Superintendent which cannot be accepted since in the application which he had submitted in Form 8 itself contains a "Certificate of Test of Ability to drive" which show that any applicant for obtaining an addition to his Driving Licence has to undergo the test of ability to drive for that particular class of vehicle. In addition to this he has also paid the prescribed fee to undergo the above test. His explanation that the Additional Licensing Authority and the Clerk concerned have orally advised him that there is no need to undergo the test of ability to drive as per rules cannot stand before Law since that he has not personal knowledge and also paid the prescribed fee for the test of competence that he has to undergo. Further the applicant might have clarified himself if he had got any such doubt, about the appearance or otherwise for the Driving Test from the available Higher Authorities.

Hence his explanation is obtaining HTV endorsement by submitting mis-representation of facts without undergoing test of competence cannot be accepted since vicarious responsibility also lies with the applicant in undergoing test of competence and thereby complying Section 11 read with Section 9 of M.V. Act, 1988. Having regard to all the circumstances and facts narrated above his application for renewal of Driving Licence bearing No. 484/95 and his explanation dated 27.3.99 are hereby rejected and his licence bearing No.484/95 is cancelled with immediate effect."

At the commencement of hearing, Shri John Rajendra Prasad,

learned counsel for the petitioner placed before me typed copy of order dated 26-7-2004 passed by the coordinate Bench in Writ Petition No. 5272 of 2000 and submitted that this petition may be disposed of in similar terms. A reading of that order shows that the learned Single Judge did not adjudicate the issue arising in the petition and disposed of the same by a rather short order. In my opinion, a serious matter like the present one which smells of wide scale corruption prevailing in the Transport Department in the matter of grant or renewal of licences cannot be given a short shrift and the Court cannot abdicate its duty to adjudicate on merits the case set up by the petitioner.

Learned counsel for the petitioner then argued that in view of the endorsement made by Additional Licencing Authority, Nandyal entitling his client to drive heavy motor vehicle, the respondent could not have declined renewal and cancelled the licence on the spacious ground that before obtaining endorsement, the petitioner had not undergone the prescribed test. He further argued that the impugned order is vitiated due to non-application of mind because the officer concerned did not consider the petitioner's application in a correct perspective and passed a stereo typed order.

I have considered the submissions of the learned counsel, but had not felt impressed.

Sections 9 and 11 of the Motor Vehicles Act, 1988 (for short, 'the Act'), Rule 15 of the Central Motor Vehicles Rules, 1989 and Rule 8 of the Andhra Pradesh Motor Vehicles Rules, 1989 (for short, 'the Rules'), which have bearing on the adjudication of this petition read as under:

> " **9. Grant of driving licence:** (1) Any person who is not for the time being disqualified for holding or obtaining a driving licence may apply to the licensing authority having jurisdiction in the area –

(i) in which he ordinarily resides or carries on business, or

(ii) in which the school or establishment referred to in Section 12 from where he is receiving or has received instruction in driving a motor vehicle is situated.

for the issue, to him of a driving licence.

(2) Every application under sub-section (1) shall be in such form and shall be accompanied by such fee and such documents as may be prescribed by the Central Government.

[(3) If the applicant passes such test as may be prescribed by the Central Government, he shall be issued the driving licence:

Provided that no such test shall be necessary where the applicant produces proof to show that-

(a) (i) the applicant has previously held a driving licence to drive such class of vehicle and that the period between the date of expiry of that licence and the date of the application does not exceed five years, or

(ii) the applicant holds or has previously held a driving licence to drive such class of vehicle issued under section 18, or

(iii) the applicant holds a driving licence to drive such class of vehicle issued by a competent authority of any country outside India, subject to the condition that the applicant complies with the provisions of sub-section (3) of section 8,

(b) the applicant is not suffering from any disability which is likely to cause the driving by him to be a source of danger to the public; and the licensing authority may, for that purpose, require the applicant to produce a medical certificate in the same form and in the same manner as is referred to in sub-section (3) of section 8:

Provided further that where the application is for a driving licence to drive a motor vehicle (not being a transport vehicle), the licencing authority may exempt the applicant from the test of competence to drive a vehicle prescribed under this sub-section, if the applicant

possesses a driving certificate issued by any institution recognized in this behalf by the State Government.]

(4) xx xx xx xx.

[(5) xx xx xx xx.

(6) The test of competence to drive shall be carried out in a vehicle of the type to which the application refers:

Provided that a person who passed a test in driving a motor cycle with gear shall be deemed also to have passed a test in driving a motor cycle without gear.

(7) When any application has been duly made to the appropriate licensing authority and the applicant has satisfied such authority of his competence to drive, the licensing authority shall issue the applicant a driving licence unless the applicant is for the time being disqualified for holding or obtaining a driving licence:

Provided that a licensing authority may issue a driving licence to drive a motor cycle or a light motor vehicle notwithstanding that it is not the appropriate licensing authority, if the licensing authority is satisfied that there is good and sufficient reason for the applicant's inability to apply to the appropriate licensing authority :

Provided further that the licensing authority shall not issue a new driving licence to the applicant, if he had previously held a driving licence, unless it is satisfied that there is good and sufficient reason for his inability to obtain a duplicate copy of his former licence.

(8) xx xx xx xx.

(9) xx xx xx xx.

11. Additions to driving licence: - (1) Any person holding a driving licence to drive any class or description of motor vehicles, who is not for the time being disqualified for holding or obtaining a driving licence to drive any other class or description of motor vehicles, may apply to the licencing authority having jurisdiction in the area in which he resides or carries on his business in such form and accompanied by such, documents and with such fees as may be prescribed by the Central Government for the addition of such other class or description of motor vehicles to the licence.

(2) Subject to such rules as may be prescribed by the Central Government, the provisions of Section 9 shall apply to an application under this section as if the said application was for the grant of a licence under that section to drive the class or description of motor vehicles which the applicant desires to beaded to his licence.

15. Driving test: - (1) No person shall appear for the test of competence to drive unless he has held a learner's licence for a period of at least thirty days.

(2) The test of competence to drive referred to in sub-section (3) of Section 9 shall be conducted by the licensing authority or such other person as may be authorized in this behalf by the State Government in a vehicle of the type to which the application relates.

(3) The applicant shall satisfy the person conducting the test that he is able to –

(a) adjust the rear-view mirror;

(b) take suitable precautions before starting the engine;

(c) move away safely and smoothly straight ahead at an angle, while at the same time engaging all gears until the top gear is reached.

(d) to change to the lower gears quickly from the top gear when the traffic conditions warrant such change;

(e) change quickly to lower gears when driving downhill

(f) stop and re-start the vehicle on a steep upward incline making proper use of the hand-brake or of the throttle and the foot-brake without any rolling back, turn right and left corners correctly and make proper use of the rear-view mirror before signaling;

(g) overtake, allow to be overtaken, meet or cover the path of other vehicles safely and take an appropriate course of the road with proper caution giving appropriate signals;

(h) give appropriate traffic signals at the appropriate time, in clear and unmistakable manner by hand or by electrical indicators fitted to the vehicle;

(i) change the lanes with proper signals and with due care;

(j) stop the vehicle in an emergency or otherwise, and in the latter case, bring it to rest at an appropriate course on the road safely, giving appropriate signals;

(k) in the case of vehicle having a reverse gear, driving the vehicle backwards, reverse it into a limited opening either to the right or left under control and with reasonable accuracy;

(l) cause the vehicle to face in the opposite direction by means of forward and reverse gears;

(m) take correct and prompt action on the signals given by traffic signs, traffic lights, traffic controllers, policemen and take appropriate action on signs given by other road users;

(n) act correctly at pedestrian crossings, which are not regulated by traffic lights or traffic police, by giving preference to persons crossing the roads;

(o) keep well to the left on normal driving;

(p) regulate speed to suit varying road and traffic conditions;

(q) demonstrate general control of the vehicle by confident steering and smooth gear changing and braking as and when necessary;

(r) make proper use of the rear-view mirror before signalling, beginning manoeuvring, moving away, altering the course to overtake, turning right or stopping;

(s) use the proper side when driving straight, turning right, turning left and at junction of the road;

(t) make proper use of accelerator, clutch, gears, brakes (hand and foot) steering and horn;

(u) anticipate the actions of pedestrians, drivers of other vehicles and cyclists;

(v) take precautions at cross roads and on road junctions with regard to –

(i)_ adjustment of speed on approach,

(ii) proper use of rear-view mirror,

(iii) correct positioning of the vehicle before and after turning to the right or left,

(iv) avoidance of cutting right hand corners,

(v) looking right, left and right again before crossing or emerging;

(w) concentrate in driving without his attention being distracted and to demonstrate the presence of mind;

(x) show courtesy and consideration for the safety and convenience of other road users, such as pedestrians,

drivers of other motor vehicles or cyclists.

8. Presenting for driving test:- The applicant for a driving test shall present himself for the test at such time and place as may be specified by the licensing authority or the person authorised by the licensing authority in that behalf."

A conjoint reading of the above re-produced provisions makes it clear that a person seeking driving licence has to make application in the prescribed form and also undergo the test as may be prescribed by the Central Government. An application for addition to the driving licence is also required to be disposed of as if it was an application for grant of licence. It is thus evident that the passing of test of competence is sine qua non for grant and/or renewal of the licence.

The facts of the case in hand show that Additional Licencing Authority, Nandyal had made endorsement entitling the petitioner to drive heavy transport vehicle without requiring him to pass the test of competence. This act of the Additional Licencing Authority was in complete disregard of the mandate of law. The respondent considered this issue in the context of the reply submitted by the petitioner along with the relevant documents and recorded a categorical finding that he had obtained HTV endorsement without undergoing the test of competence. Therefore, it is impossible to say that the order under challenge is vitiated due to non-application of mind.

The argument of the learned counsel that while considering the application for renewal, the competent authority could not have cancelled the licence is liable to be rejected because the record of the case clearly reveals that he had obtained HTV endorsement by misrepresentation and in active connivance with the officers/officials of the department. We shudder to imagine as to how an officer entrusted with the duty of ensuring rigorous compliance of the provisions of law played in the hands of the petitioner, enabled him to drive heavy motor

vehicle and thereby put the lives of hundreds and thousands of people to peril. It needs no emphasis that a person, who drives vehicle without undergoing the prescribed test, is always a threat to the users of the road. It is, therefore, imperative for the concerned authorities to ensure that no one is able to get licence without undergoing the prescribed test.

In the result, the writ petition is dismissed. Interim order dated 1-12-2000 passed in WPMP No. 29991 of 2000 is vacated and the miscellaneous petition is dismissed. The respondents are directed to forthwith seize the driving licence of the petitioner and ensure that he does not drive heavy motor vehicles. Liberty is also given to the authorities of the Transport Department to take other punitive measures against the petitioner for having obtained licence by manipulations and fraud.

The petitioner shall pay costs of Rs.10,000/-. This amount shall be deposited by him with Andhra Pradesh State Legal Services Authority within a period of one month from today.

Principal Secretary, Transport, Government of Andhra Pradesh should initiate a probe into the grant and renewal of licences in various districts of the State to find out whether licences were issued by different authorities without requiring the applicants to undergo the prescribed tests. The angle of corruption should also be probed because without fiscal quid pro quo, the prescribed authorities would not have manipulated grant and renewal of licence without requiring the applicant to undergo the prescribe test. The report prepared on the basis of the probe undertaken pursuant to this order should be produced before the Court at the end of three months period.

G.S.SINGHVI, CJ

July 4, 2007

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